EDITORIAL COMMENT.

THE NEW YORK CONFERENCE ON REFORM OF THE CRIMINAL LAW AND PROCEDURE.

Among the several agencies proposed by the American Institute of Criminal Law and Criminology, with a view to awakening interest and securing coöperation in the movement for the betterment of our criminal law and procedure, is the holding of conferences in the several states for serious discussion of the important problems which relate to the administration of the criminal law and for the interchange of views among jurists, practitioners, criminologists and others concerned directly or indirectly with the crime problem in its various aspects. In Wisconsin two notable conferences of this kind have already been held and a permanent state branch of the American Institute has been organized to carry on the work so auspiciously begun. In New York, where the need for law reform has been generally recognized and where earnest efforts have already been made to improve the existing machinery, a similar conference was held during the past month, at which a number of distinguished jurists, including the President of the United States, leading members of the local bar, police officials, law teachers, criminologists and other persons interested or indirectly concerned with the administration of the criminal law delivered addresses in which the existing defects were dwelt upon and the remedies for their improvement suggested. At the close of the conference, which lasted two days, a state branch of the American Institute was organized for the permanent and systematic carrying forward of the work begun.

In addition to the banquet at the Hotel Astor, three sessions were held, at which the following general topics were discussed by distinguished persons in their respective fields: (1) the organization, procedure and problems of the courts of inferior jurisdiction; (2) reform of the criminal law and procedure, and (3) responsibility for crime.

Naturally, the address which was delivered by the President of the United States attracted the most attention. Following the lines of his previous addresses on the subject, the President compared the efficiency of English judicial methods with our own, and declared that the superior efficiency of the English system was largely due to the character, experience and learning of the English judges, their large power in the conduct of criminal trials, the respectful attitude of counsel toward the judges and the simplicity of English procedure. The responsibility for

one of the chief sources of evil, he said, was the presence of lawyers in our legislatures, who have insisted upon limiting the power of the judges by statute and thereby taking away from them respect for their rulings, so apparent in every English court of justice.

"In many states, judges," said the President, "are not permitted to comment upon the facts at all. They are not even allowed to charge the jury after the arguments of counsel, but they are required to submit written charges to the jury upon abstruse questions of law, with no opportunity to apply the principles concretely to the facts of the case, and with the result that the questions, both of law and fact, are largely left to the untutored and undisciplined action of the jury, influenced only by the contending arguments of counsel.

"The restraint that a judge in the course of a trial imposes upon the manner and conduct of counsel in an English court is thus wholly wanting, with the result that there seems to have been a substantial change in the code of professional ethics governing counsel, and in the extremes to which counsel in the defense of their clients seem to think it is entirely proper for them to go. Their conduct makes neither for the dignity of the court, for the elevation of the ethics of the bar, for the expediting of criminal procedure, nor for the reasonable punishment of crime."

The amount of unpunished crime in this country, as compared with that in England, was, he declared, humiliating to every true son of America, and was a standing reproach to our civilization. "Why is it, then," he said, "that, speaking generally, every person who commits a crime in England is tried and rarely escapes punishment, while in this country it is not too much to say that a majority escape the law?" The answer, he said, lies in the greater efficiency of the English judiciary and in the lighter regard for the law and its enforcement on the part of the American people as a whole, and a less vigorous public opinion in favor of the punishment of crime, the effect of which is to weaken the obligation of prosecuting officials and juries.

At the first session of the conference Hon. Alfred R. Page, a justice of the Supreme Court, discussed the importance of magistrates' courts in the great cities, and pointed out the improvements that have been made in those of New York since their reorganization under the law of 1909 which bears his name. At the same session Chief Magistrate McAdoo discussed the relation of the police to the crime wave and Prof. John Bassett Moore, America's greatest authority on the law of extradition, dwelt upon the difficulties in the way of punishing criminals who escape from one jurisdiction to another. Prof. Moore suggested that, since the governor of a state cannot be compelled to discharge his constitutional duty of delivering up criminals from other states, a comprehensive federal statute should be passed relieving the executive of this duty and imposing it upon some judicial officer, so as to do away with the present combination of executive and judicial action, a combination which,

although it affords large opportunities for escape to fugitives who have money to spend, does not tend to promote the ends of justice or respect for law.

At the second session an address was delivered by Mr. William M. Ivins, who pointed out the lack of adequate definitions of crime, and dwelt upon the extraordinary variety of criminal statutes.

"We spread on our statute books," said Mr. Ivins, "from forty to fifty thousand statutes, a large proportion of which are criminal laws. A man is a criminal in one state and not a criminal in another in respect to an unfortunate number of matters. It will ultimately be found that if our present constitutional system finally breaks down, its most disastrous break will be due to the fact that, through legislation, that which is criminal in one part of the country is not criminal in another; that that which is criminal on the right bank of a river is not criminal on its left bank; that that which is punishable somewhere is punishable nowhere else, and that which ought to be punishable everywhere may, after all, be punishable nowhere."

At the same session addresses were delivered by Prof. Giddings, on the "relation of the criminal to society;" by Assistant District Attorney Nott, on the "effect of the double-jeopardy principle in criminal trials; by Prof. Edwin R. Keedy of Chicago, on English and American criminal procedure compared, and by Dr. Roland P. Faulkner, assistant director of the census, on "criminal statistics in the United states."

At the third session the principal address was delivered by Howard S. Gans, Esq., of the New York bar, on the "consequences of unenforceable legislation." Mr. Gans asserted that millions of dollars in the form of blackmail were being paid annually to the police and politicians of New York City for the privilege of violating laws that should never have been enacted and which were practically unenforceable. The effect on the police, he said, was most demoralizing, since it established a partnership between them and the keepers of disorderly resorts, and, besides, it tended to undermine the public conscience. He advocated a system of toleration and regulation of the social evil, such as was recommended by the committee of fifteen some years ago.

At the same session Dr. Carlos MacDonald discussed the subject of medical expert testimony in criminal trials, in the course of which he advocated the restriction of the function of the jury to the determination simply of the facts in insanity cases, leaving to experts appointed by the courts the determination of the question of the sanity or insanity of the accused. Had such a system been followed in the trial of the Thaw case, the fact of the guilt of Thaw could have been determined in

a few hours and the question of his sanity could have been settled in two or three days, thus sparing the public the disgusting details which were strung out through a period of many weeks.

At the banquet an address was delivered by Mr. N. W. MacChesney of Chicago, President of the American Institute of Criminal Law and Criminology, in which he suggested the following changes in our criminal procedure:

The right of the prosecution to comment upon the defendant's refusal to testify should be secured. The right to use private confessions obtained by officers of the law (commonly called the "third degree") should be abolished.

The same right of change of venue should be given to the state as to the accused, and removal under proper restrictions from one county to another allowed.

The provisions requiring a unanimous verdict should be done away with, and in all except capital cases a three-quarters verdict should be allowed.

The amendment of indictments should be allowed at any time if the entire character of the crime is not changed and the accused is given the right, if necessary, to prepare any additional defense made necessary by such change.

The power of the trial judge should be rehabilitated so that he can exercise his common law powers with the right to summarize and comment upon the evidence as in the federal courts, and cease to be what President Taft has compared to a mere moderator in a religious assembly.

The same number of challenges should be allowed to the state as to the accused, and they should be placed, so far as possible, upon the same footing, without undue hardship to the accused.

Public defenders should be provided if an appeal is to be allowed the state, so that in such cases the burden to the accused may be minimized, where he, without means, has to face the power, prestige and resources of the state.

Where accused takes the stand in his own behalf, he should be subject to cross-examination and should be taken to have waived his constitutional privilege against self-incrimination. The principle of jeopardy should not apply in case of mistrial or retrial.

An indictment should be sufficient if it specifies the crime, its time and location, with sufficient particularity to prevent second prosecution.

Press comment should be stringently limited to actual report of the proceedings, without comment, editorially or otherwise, and without comment from the state's or district attorney.

Jurors should not be disqualified because of the reading of accounts or hearings of rumors regarding alleged crime, but only when they cannot give a fair verdict because of fixed opinion.

Expert testimony should be rigidly regulated, and if the experts are not furnished by the state their qualifications should be passed upon by it, their fees limited, and contingent fees absolutely prohibited.

Jury service should be compelled on the part of practically every citizen, and to that end the law should be amended so that the time of such service may be fixed so that it will give the least inconvenience possible.

A transcript of the evidence of a witness at a former trial, whom it is impossible to produce, should be competent evidence in a second trial.